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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/645,279	08/24/2000	Caren H Baker	EMPIR-020PUS	3823

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EXAMINER

STEELMAN, MARY J

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 09/22/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/645,279	Applicant(s) BAKER ET AL.	
	Examiner Mary J. Steelman	Art Unit 2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 24 August 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to Amendment A filed 08/01/2003.
2. Claims 1-19 are pending. Claims 2, 5-8, 10, 13, and 19 are amended.

Specification

3. In view of the amendment to the Specification, the objection noted in the First Office Action is hereby withdrawn.

Claim Objections

4. In view of the amendment to Claim 13, the objection noted in the First Office Action is hereby withdrawn.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-7, 9, 12-15, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,473,794 to Guheen et al.

Per claim 1:

-receiving, by a service provider, at least one software component from a customer; (Guheen: Col. 175, lines 56-59, "Data relating to needs of a user may also be received for the purpose of outputting a recommendation of the products and services based on the inputted needs.")

Art Unit: 2122

-providing, by said service provider, test code for testing said at least one software component;

(Guheen: Col. 271, lines 5-27, "Automatically compiles finished code to test technical correctness...")

-testing with said test code said at lest one software component; (Guheen: Fig. 97, #3606 and col. 270, lines 54-55, "...in operation 3606, the operability of the system applications are tested.")

-monitoring, by said service provider, results of said testing; (Guheen: Col. 268, lines 65-67, "Monitors production web site performance and traffic...")

-providing, by said service provider, the results of said testing to said customer. (Guheen: Col. 269, lines 1-3, "The management and operations component of the present invention may monitor production web site performance and traffic.")

Per claims 2 - 4: (Guheen: Col. 193, line 62 – col. 194, line 10, and col. 178, line 35, "...pay for services...", and col. 268, lines 54-60, "...bill for that usage...a user would be billed for belonging to a site requiring a monthly fee for viewing.")

Per claim 5: (Guheen: Col. 185, lines 10-12, "The present invention provides a system and method for conducting commerce via an electronic means, such as a computer network.")

Per claims 6 & 7: (Guheen: Col. 190, lines 14-18, "...contact millions of potential customers is to use the global Internet...using the well defined TCP/IP protocol.")

Per claim 9: (Guheen: Col. 131, line 18, "...prepare for regression testing...", and col. 256, lines 28-31, "Load Balancing Spreads tasks among application servers using an intelligent load balance scheme" and col. 271, lines 1-2, "local and remote hyperlinks may be automatically tested" and line 10, "test technical correctness" and lines 61-63, "Simulates multiple users on

Art Unit: 2122

web site” Also, col. 272, lines 2-4, Enables programmatic control of load generation. Allows tests to be scheduled and load to be varied over time.”)

Per claim 12: (Guheen: Col. 2, lines 9-15 and col. 7, lines 65-67, “...pictorial representation of an existing network framework is displayed...”)

Per claim 13: (Guheen: Col. 15, lines 14-15 and col. 19, bottom of page, “JavaBeans Development Kit”)

Per claim 14: (Guheen, Col. 27, lines 35-36, “Provides ability to preview, test and change applications before production stage.”)

Per claim 15: (Guheen: Co. 271, lines 61-62, “WEB SITE TESTING TOOLS...”)

Per claim 19: (Guheen: Col. 161, lines 14-15, “Archiving can be used to move information to or from distributed and centralized sites.”)

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8, 10, 11, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,473,794 to Guheen et al., in view of U.S. Patent 5,371,883 to Gross et al.

Guheen disclosed a system for testing components of web based frameworks. Guheen failed to disclose details on receiving directions regarding the type of testing to be done, how to process results from testing, the test format, and determining the input / output parameters.

Art Unit: 2122

However, Gross provided more details regarding testing in a networked environment in his invention.

Per claim 8: (Gross: Col. 4, lines 47-52, "...user specifies...values...applicable..." and col. 5, lines 4-22.)

Per claim 10: (Gross: Col. 6, lines 34-38, "...user can produce many reports...")

Per claim 11: (Gross: Col. 3, lines 23-26, "...the results are correct...")

Per claim 16: (Gross: Fig. 1 and Col. 7, lines 34-38, "...limited only by the number of machines attached..." and lines 53-60.)

Per claim 17: (Gross: Col. 3, lines 7-17, "...creation and storage of Test Case...Control Machine...contains...test cases and their expected results...")

Therefore, it would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified Guheen's invention to test component of a web based framework by including Gross' invention of testing in a distributed environment, because although Guheen showed a linked host and target, he failed to show details of testing / reporting directions, a plurality of containers for testing and determining inputs / outputs which are used for (col. 1, lines 26-30) adequately testing...each of the modules, integrating the modules...testing the subsystem and...the entire system. Furthermore, (col. 2, lines 5-7) the "centralized database of test case information...used in planning, tracking, and as input to the control process" provides an improved method of testing in a distributed environment.

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,473,794 to Guheen et al., in view of U.S. Patent 5841670 to Swoboda.

Guheen disclosed a system for testing components of web based frameworks. Guheen failed to disclose using a graphical user interface to test the components. However Swoboda disclosed (Fig. 45, and col. 8, lines 20-26) software emulation using the user interface to test components.

Therefore, it would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified Guheen's invention to test component of a web based framework by including emulation using a graphical user interface because (col. 1, lines 64-67) "designed-in testability is needed, so that the finished product is still both controllable and observable during test and debug.

Response to Arguments

8. Applicant's arguments filed 08/01/2003 have been fully considered but they are not persuasive.

9. Applicant has argued, in substance, the following:

(A) The Guheen reference neither describes nor suggests "receiving, by a service provider, at least one software component from a customer."

Examiner responds: Col. 2, lines 6-8, Guheen disclosed, "A system, method and article of manufacture are provided for planning the testing of components of an existing network framework." Guheen provides services available for sale (col. 11, line 48). Guheen disclosed (col. 13, lines 45-47), "...one embodiment of the present invention may be used in test planning or the like." At col. 175, Guheen disclosed commerce related web application services, "allowing purchase of products and services via a displayed catalog...(lines 50-51)" "Data

Art Unit: 2122

relating to the needs of a user may also be received (components for testing and test parameters supplied by customer)". Column 176 continues to disclose pricing and payments for the services. See figures 19 and 20 that suggest components are tested in a networked commerce environment. Guheen's invention is related to a client purchasing services (in this case, test services) for a fee from an application service provider. The service may include receiving data (components and parameters) from a client to process for a fee.

(B) The Guheen reference neither describes nor suggests "...at least a portion of the results from said load testing are provided in a graphical format..."

Examiner responds: Guheen disclosed at col. 225, lines 25-43, "...test content...Provides load, regression and performance testing capabilities..." Also note at col. 119, lines 34-39, "Graphical representation tools are used to display important system information..." Producing results in a graphical format is so commonly done, it should be considered to be inherent.

(C) Neither the Guheen nor Gross reference describe nor suggest a "...step of providing further comprises the step of providing access to multiple containers for testing the performance of said software component in different ones of said multiple containers..."

Examiner responds: See Gross, figure 1 which shows test machines 10, 20, 50...

(D) Neither the Guheen nor Gross reference describe nor suggest "...the step of determining the parameter of the data sets to test a software component by examining the interface of each method in the software component and determining what inputs and outputs must be specified for that software component..."

Art Unit: 2122

Examiner responds: See Gross, col. 4, lines 3-26, "...define ...programming interface calls...The definitions include all fields or parameters that are used...all values that must be used in any test case must be defined...definitions are stored as a unique entry..."

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Steelman, whose telephone number is (703) 305-4564. The examiner can normally be reached Monday through Thursday, from 7:00 A.M. to 5:30 P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on (703) 305-4552.


Art Unit: 2122

The fax phone numbers are (703) 872-9306 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Mary Steelman



09/15/2003



TUAN DAM
SUPERVISORY PATENT EXAMINER